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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

03/179,636

Applicant(s)

Kubinski et al.

Examiner

Schmidt

Group Art Unit

1639

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/5/00
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 245-260 is/are pending in the application.
- ☐ Claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☒ Claim(s) 245-260 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.
- ☐ Claim(s) _____

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Application/Control Number: 08/978,636

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DETAILED ACTION

1. The request filed on 12/5/00 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/978,636 is acceptable and a CPA has been established. An action on the CPA follows.

Double Patenting

2. Claims 255, 257, 259 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 245-247 of copending Application No. 08/978,635, for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

Claim Rejections - 35 USC § 112

3. Claims 245-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

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4. Claims 245-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

Claim Rejections - 35 USC § 102

5. Claims 245-249, and 253 are rejected under 35 U.S.C. 102(e) as being anticipated by Saito et al., for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.
6. Claims 245-247, and 249-254 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al., for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.
7. Claims 255-260 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullenger et al., for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

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8. Claims 255-260 are rejected under 35 U.S.C. 102(b) as being anticipated by DeYoung et al., for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

Claim Rejections - 35 USC § 103

9. Claims 245-260 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeYoung et al. in view of Karn et al., Wagner et al., Curiel et al., and Zaia et al., for the same reasons of record as set forth in the Official action mailed 02/18/99 and 11/10/99.

10. This is a CPA of applicant's earlier Application No. 08/978,636. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Mary M. Schmidt*, whose telephone number is (703) 308-4471.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *John LeGuyader*, may be reached at (703) 308-0447.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Analyst, *Katrina Turner*, whose telephone number is (703) 305-3413.

M. M. Schmidt
December 14, 2000

Remy Yucel
REMY YUCEL, PH.D
PRIMARY EXAMINER